



OLR RESEARCH REPORT

March 14, 2013

2013-R-0184

CONNECTICUT'S PRIORITY LIEN FOR COMMON INTEREST COMMUNITIES

By: Michael Csere, Legislative Fellow

You asked how the recent Superior Court decision (*Lake Ridge Condominium Association, Inc. v. Vega*, 2012 WL 6634905 (Conn. Super.)) affects Connecticut's priority lien for common interest communities (CGS §§ 47-200 et seq.). You asked whether this decision could have an adverse effect on common fees used to support condominium budgets.

SUMMARY

The state's Common Interest Ownership Act (CIOA) gives common interest community associations seeking to collect unpaid common charges a six-month priority lien over previously recorded mortgages. While foreclosing banks had traditionally paid the common charges for a unit in foreclosure until the foreclosure was finalized, even beyond this six month period, a recent Superior Court decision held that when a bank and association are simultaneously foreclosing on the unit, banks are not required to pay beyond the six months of the priority lien.

A *New Haven Register* [article](#) reports that since the court's decision, some banks are refusing to pay more than six months of common charges during a foreclosure. This change in practice could result in higher fees for common interest community unit owners, especially those in smaller communities, because the common charges that a bank does not pay during a foreclosure action would likely be absorbed by the other unit owners. Community association advocates are warning of the

potential for higher fees and other adverse consequences, and are taking action to mitigate these consequences. Proposed legislation before the General Assembly's Insurance and Real Estate Committee would extend the six-month priority lien for common expense assessments to 12 months.

FORECLOSURE AND PRIORITY OF COMMON CHARGES

Under CIOA, associations for condominiums and other common interest communities have a statutory lien on a unit for common charges and other assessments attributable to that unit (CGS § [47-258\(a\)](#)).

This lien has priority over all other liens and encumbrances on a unit except for (1) those recorded before the recording of the declaration; (2) liens for real estate taxes and other governmental assessments or charges; and (3) first or second mortgages recorded before the assessment became delinquent, except for an amount equal to common expense assessments that would have become due during the six months immediately preceding an action to enforce the association's lien or the mortgage. This six-month priority lien over previously recorded mortgages also includes the association's costs and attorney's fees it incurs to enforce its lien (CGS § [47-258\(b\)](#)).

If a mortgage holder forecloses on a unit, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that unit which became due before the sale, except for assessments that are part of the six month priority lien noted above. But any unpaid assessments not satisfied from the sales' proceeds become common expenses for all unit owners, including the purchaser (CGS § [47-258\(l\)](#)).

2012 SUPERIOR COURT DECISION

A November 2012 New Haven Superior Court decision addressed the issue of how the six-month priority lien described above applies when a first mortgagee (e.g., bank) and a condominium association are simultaneously foreclosing their respective security interests in a unit.

Background to the Case

In December 2009, Bank of America instituted an action to foreclose the mortgage on a condominium unit. The condominium association brought its own foreclosure action in September 2010 against the unit owner and the bank due to unpaid common charges. The court entered a judgment of strict foreclosure in the association's foreclosure action and the bank paid the association the amount of unpaid common charges

(\$4,682.20) due on the unit owner's behalf. The association filed a satisfaction of judgment with the court, dated February 2011, which stated that the court's judgment was fully paid and satisfied by the bank on behalf of the unit owner.

2012 Court Decision

In June 2011, approximately five months after the bank's payment of the common charges, the condominium association initiated a new foreclosure action against the bank and unit owner, alleging that the monthly charges continued to go unpaid. At that time, the bank's foreclosure action was still pending. The bank claimed in defense that under CGS § [47-258](#), when a mortgagee pays the outstanding common charges and associated fees up to the six-month lien, the association's priority is extinguished. Thus, the bank argued, its \$4,682.20 payment to the association earlier in 2011 had extinguished the association's priority lien.

In its decision, the court agreed with the bank, essentially telling the association it could not force the bank to pay for additional charges that accrue while its foreclosure is ongoing beyond the six-month statutory requirement (*Lake Ridge Condominium Assoc. v. Vega*, No. NNHCV116021568S, 2012 WL 6634905 (Super. Ct. Nov. 30, 2012) (unpublished)). OLR Report [2013-R-0178](#) provides further analysis of the court decision.

POTENTIAL EFFECT ON CONDO ASSOCIATIONS

Bank Practices During Foreclosure

Although the court decision does not change the law, it could result in a change in practice by banks that might affect common fees. The traditional practice, according to the *Register* article, was for banks to pay all accrued condo fees during foreclosures. But the article suggests that banks are now refusing to pay more than six months of common fees because it takes much longer than previously to complete a foreclosure. Due to factors such as the housing market crisis, numerous foreclosures, improper court filings by banks, and potential large losses for banks, it can now take years rather than months to foreclose on a property. Hamden attorney Kristie Leff, who represented Lake Ridge Condominium Complex in Meriden in the above-referenced case, stated in the article that she is aware of at least 12 currently unresolved instances of banks resisting attempts by common interest associations to collect more than six months of fees.

The article further suggests that banks could benefit by delaying the foreclosure process to avoid paying the common fees. With a six-month priority lien for common fees and a foreclosure process that could last several years, banks may have an incentive to pay the six-month fee and then delay the completion of foreclosure as long as possible. That way, banks would avoid or significantly delay paying common fees that are required once they take title to the property.

Common Fees

It is likely that common fees that the bank does not pay would be absorbed by the other unit owners. Depending on the common interest community size, this could result in higher fees for all unit owners.

For example, notes the *New Haven Register* article, “if it takes three years for a bank to complete its foreclosure, the rest of the unit owners in the complex will have to pay higher common charges for two and a half years to make up for the loss.” While a large common interest complex of 100 or more units may be able to absorb the loss, it would be more difficult for smaller communities to do so. For example, a condominium complex of 100 units with two units experiencing a lengthy foreclosure would lose 2% of its fee income during the foreclosure period (beyond the six-month lien). On the other hand, a complex of only six units where two units are experiencing a lengthy foreclosure would lose one-third of its fees.

The [Connecticut chapter of the Community Associations Institute](#) (CAI-CT), an organization which represents the interests of common interest communities, condo lawyers, and property managers, asserts that “[s]maller proportions of owners will have to pay larger shares of the cost to cover the increasing number of units in default for years at a time,” and that this will cause “financial burden and deteriorating property values which can lead to even more foreclosures.” CAI-CT is seeking donations to fund litigation as well as legislation that increases protection for condo associations when unit owners stop paying their mortgage and common charges.

Proposed Legislation

This legislative session, the Insurance and Real Estate Committee raised a bill ([HB 6477](#)) that would extend from six to 12 months the priority of common expense assessments over previously recorded mortgages. The committee heard the bill on March 5.

SOURCES

Community Associations Institute – Connecticut, “SPECIAL ALERT: Will Small Associations Continue to Subsidize BIG Banks?”, http://www.caict.org/LAC_priority_lien_alert_feb15.html (last visited March 14, 2013).

George Gombossy, “Connecticut Condo Complexes Risk Financial Hardship Due to Judge's Ruling,” *New Haven Register* (Feb. 1, 2013), available at: <http://nhregister.com/articles/2013/02/01/news/doc510c0f080131c576389757.txt>.

MC:ro